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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of	)
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Review of the Commission	)MM Docket No. 91-221
Regulations Governing Television	)
Broadcasting	)

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REPLY COMMENTS OF VIACOM INC.

VIACOM INC.

Edward Schor
Vice President, Associate General Counsel,
Regulatory

July 10, 1995

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SUMMARY

I. If the Commission relaxes its local television ownership rules so as to permit stations to hold second station ownership or have LMAs in the same television market, such relaxation should not be applicable to "full service, full coverage" networks. Doing so would encourage and facilitate the ability of established networks to preclude emerging networks from obtaining crucial station affiliations, thereby limiting the distribution of new network programming and undercutting the economic viability of emerging networks. For the very same reasons, and while the twelve station national ownership cap should be eliminated, the 25% ownership cap and the UHF discount should be retained for full service, full coverage networks.

II. The one-to-a-market rule no longer serves any legitimate regulatory purpose and should be eliminated. Audio and video programming are sufficiently distinct products and represent different markets for purposes of competitive analysis. The markets for audio and video program production are also distinct and provide no basis for a one-to-a-market restriction. The markets for radio and TV local advertising are distinct as well and, in any event, the availability of numerous alternative advertising outlets effectively constraints the market power of radio/TV combinations. Elimination of the one-to-a-market rule will offer substantial economic efficiencies for those wishing to take advantage of such efficiencies and will result in competition and diversity benefits. However, to the extent the Commission nevertheless wishes to retain the rule, the Commission should reconcile the one-to-a-market waiver policy with its relaxation of the local radio caps by allowing combinations of one TV station, two AMS and two FMs in the top 25 markets where at least 30 separately owned licensees remain.

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To: The Commission

REPLY COMMENTS OF VIACOM INC.

Viacom Inc. ("Viacom") hereby files its reply comments in response to the Commission's Further Notice of Proposed Rule Making in the above captioned proceeding, released January 17, 1995 ("NPRM"). These comments address the television duopoly rule and the national ownership caps[1] and are made from the perspective of a broadcast affiliate of each of CBS, NBC and Fox as well as from the perspective of a potential fifty percent (50%) owner of the United Paramount Network ("UPN").[2] These comments also address the one-to-a market rule from the perspective of a licesnee of television and radio stations, several of which serve the same market pursuant to waivers of the rule[3] .

[1] The television contour overlap (duopoly) rule (47 CFR Section 73.3555 (b)) prohibits an individual or company from being the licensee of two television stations if the Grade B contours of the signals overlap. The television national ownership rule (47 CFR.Section 73.3555(e)(1) and (2)) prohibits one individual or company from being the licensee of more than 12 television stations (14 stations in the case of minority ownership) which have an aggregate national audience reach exceeding 25% (30% in the case of minority ownership)..

[2] UPN is an emerging network that, in order to achieve competitive parity with ABC, CBS, NBC, and Fox, must develop an affiliate base that consists mainly of existing and authorized UHF stations. Viacom is one of the program suppliers to UPN and, through its subsidiary Paramount Pictures Corporation ("Paramount"), has an option to purchase 50% of the equity of UPN, all of which is currently held by subsidiaries of Chris-Craft Industries, Inc. Paramount has also provided certain of the initial funding, personnel, and infrastructure to UPN. Viacom recently filed Comments and Reply Comments in MM Docket No. 94-123, supporting retention of the Commission's Prime Time Access Rule, from this perspective.

[3] The one-to-a-market rule (47 C.F.R. Section 73.3555(c) and Note 7) prohibits an individual or company from being the licensee of both a television station and a radio station in the same local market. The rule was

I. IN REVIEWING ITS TELEVISION OWNERSHIP RULES, THE COMMISSION SHOULD TAKE NO ACTION THAT IMPEDES THE DEVELOPMENT OF EMERGING NETWORKS.

A. If the Commission Relaxes its Local Television Ownership Rule to Permit Stations to Hold Second Station Ownership Interests or Have LMA's With Second Stations in the Same Television Market, Such Relaxation Should Not Be Applicable to Full Service, Full Coverage Networks.

A number of parties urge the Commission to eliminate or substantially relax its local ownership restriction (the "duopoly rule").[4] While Viacom takes no position on whether, as a general matter, the duopoly restriction should be relaxed or, in a related area, whether television stations should be authorized to enter into LMA's with other television stations in the same market, Viacom is concerned that if full service, full coverage networks are permitted to acquire such interests, they will have an ability to prevent or substantially impede the development of emerging networks such as UPN.[5] When a non-network station owner acquires an ownership interest or enters into an LMA with a second station in the same market, it has every incentive to maximize the profit earned by the second station. It would therefore be likely to carefully and

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amended in 1989 to permit TV/radio combinations, on a "presumptive waiver" basis, if the combination involved (i) stations in one of the top 25 television markets and 30 separately owned broadcast licensees would remain after the combination or (ii) "failed" stations. Second Report and Order in MM Docket No. 87-7, 4 FCC Rcd. 1741, 1751, reconsidered in part, 4 FCC Rcd. 6489 (1989). In other cases, waivers are considered on a case-by-case basis. Viacom is directly or indirectly the licensee of 12 radio stations and 12 television stations which include TV/radio combinations in the Detroit (AM/FM/TV) and Washington, D.C. (2 AM/2 FM/TV) markets. Viacom obtained a permanent waiver of the rule with respect to Detroit and a temporary waiver with respect to Washington, D.C.

[4] See, e.g., Comments of the Association of Independent Television Stations (the duopoly rule impedes the ability of television stations to compete with other electronic program distribution media in today's marketplace and will prevent them from competing tomorrow); Comments of Fox Television Stations (duopoly rule should be relaxed, but advocates no particular standard); Comments of Communications Corporation of America (duopoly rule no longer serves its original purpose and should be substantially relaxed); Comments of Dispatch Broadcast Group (Commission should permit duopolies if one station operates on a UHF channel); Comments of Ellis Communications, Inc. (duopoly restrictions should be eliminated or substantially relaxed); Comments of Lee Enterprises, Inc. (duopolies should be permitted even within Grade A contours in certain circumstances).

[5] As usual herein "full service, full coverage networks" are networks that have audience reach of 90 or 95 percent of television households and provide at least 14 hours of prime time programming each week. For certain purposes, Viacom proposed a 15 hour prime time schedule as one element of its alternate sunset proposal in the Prime Time Access Rule proceeding in Docket No. 94-123. However, Viacom believes that use of the 14 hour standard is preferable in the context and within the confines of this proposal because under current circumstances a 15 hour prime time test would permit Fox to escape its effect when, in fact, Fox is on a par with the other networks for the purpose of the issue now before the Commission. Therefore, Viacom believes that any restrictions in this area that are applicable to ABC, CBS, and NBC should also be applicable to Fox.

objectively consider whether or not to affiliate the second station with an emerging network and make its decision based upon its determination of what it believes is in its best economic interest. However, if a full service, full coverage network acquires such an interest, the equation for determining its best economic interest is quite different from that applicable to a non-network owned station. A full service, full coverage network could very well conclude that while the individual station's interests would be served by an affiliation with a second network, its best overall corporate iinterests would be served by not affiliating the second station with an emerging network, since such affiliation would enhance the ability of the emerging network to compete with the full service, full coverage network, especially if there were no other unaffiliated stations in the market available for affiliation with the emerging network.. Even though the network owner in this situation would not maximize the profits available for operation of the second station, its overall profits would nevertheless be enhanced because of the reduction in competition to the network either immediately or prospectively as the emerging network becomes a full-bodied competitor. If such a result occurred in more than a few markets, the very viability of the emerging network could be threatened.

Viacom therefore urges that, if the Commission decides to relax its duopoly rule to permit stations to acquire interests in second stations or enter into LMA's with stations in markets in which they operate, any such relaxation not be applicable to full service, full coverage networks[6].

B. The Twelve Station National Ownership Limitation Should Be Eliminated, But The 25% Ownership Cap And The UHF Discount Should Be Retained Except For Full Service, Full Coverage Networks.

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[6] While it may initially seem that emerging networks would have the same incentives and should be subject to the same limitations, in fact the resources of emerging networks will be directed to acquiring owned and operated stations and strong primary affiliations. It is inconceivable that they would divert and diffuse the resources otherwise necessary to expand their coverage (through acquisitions or affiliations) so as to acquire interests in more than one station in a market for the purpose or with the intent of depriving an existing or potential network competitor with an outlet in that market. Moreover, when an emerging network purchases a station in order to operate it as an O&O, it may find it necessary to LMA a second station in the market in order to place programing on that second station which had previously aired on the network's new O&O but can no longer be broadcast because of the new network schedule. Owners of emerging networks therefore need not and should not be made subject to the prohibition proposed on full service, full power networks, at least until those networks themselves also become full service, full coverage networks.

Several parties have advocated eliminating the twelve station ownership cap but retaining the national audience reach limits.[7] Viacom agrees with these comments. The proposal to eliminate the twelve station cap seems uncontroversial, but whether or not the 25% national audience reach provision should be modified is more controversial. Viacom believes for several reasons that modification of the audience reach provision would impede the development of emerging networks.

First, if the audience reach provision is increased, it is likely that additional stations will be acquired by full service, full coverage networks. Because of the resources available to these networks and the inherent preference of all broadcasters for VHF stations over UHF stations, it is likely that these networks will be active in the market to purchase not only UHF stations but especially VHF stations when they are available. Any station that is owned by a full service, full coverage network is no longer available even as a potential secondary affiliate for an emerging network. For such networks, this becomes even more problematic when potential VHF affiliates are owned by competing full coverage networks. Fox recently showed that, ultimately, emerging networks reach the point where they are able to compete with the more established networks for VHF affiliates. The ability of the currently emerging networks to do so as they begin to approach parity with the established networks will be materially diminished if the audience reach limit is raised since more stations, particularly VHF stations, will be owned by the established networks and will be withdrawn from the pool of stations available for affiliation switches.

Second, even if the established networks do not purchase additional stations upon the raising of the audience reach limitation, their mere ability to do so increases the leverage they are able to exercise over their affiliates and thereby not only coerce clearance for network programming that would not otherwise have been cleared (thereby denying broadcast clearances for the emerging networks) but also coerce their affiliates to refrain from becoming secondary affiliates of emerging networks. Furthermore, as the existing networks increase their program production activities and enter the first run and off-network syndication business upon the

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[7] See, e.g., Comments of Ellis Communications, Inc., Comments of the Network Affiliated Stations Alliance, Comments of Lee Enterprises, Incorporated, Comments of Pulitzer Broadcasting Company.

currently scheduled sunset or possible earlier repeal this year of the Commission's syndication rules, the programming leverage of existing networks over their affiliates is likely to extend from network programming to syndicated programming, resulting in network control of more and more local station broadcast time, all at the expense of the affiliates' capacity to enter into secondary affiliations with emerging networks. Moreover, the mere possibility that one of the existing networks could buy another station in the market to become its owned and operated affiliate if the existing affiliate either did not clear network programming, rejected syndication offerings from its network or secondarily affiliated with an emerging network, would be the source of such leverage. See Comments of Network Affiliated Stations Alliance at 5-9. The enhancement of the leverage of the existing networks would make competition with them by emerging networks extremely difficult, if not impossible.

The increased leverage of the existing networks would come at a particularly inopportune time. There are a number of other developments, both regulatory and economic, which are in the process of enhancing the dominant position of the existing networks over their affiliates. All of these in turn would exacerbate the dominant position of the existing networks over emerging networks. Some of these developments are:

- The full service, full coverage networks are aligning network and affiliate economic interests by making equity investments in their affiliates. The heated competition among the networks for VHF affiliates was set in motion in May, 1994 when Fox bought a 20% equity interest in New World Communications Group for $500 Million and entered into a ten-year affiliation agreement with New World covering its 12 stations.[8] Fox has also purchased equity interests in SF Broadcasting and Blackstar Acquisition. SF Broadcasting plans to acquire four

[8] See, E.g., Foisie, Fox and the New World Order, Broadcasting & Cable, May 30, 1994, at 6; Stern, Small Investments Yield Big Benefits -- Networks Use Minority Interest in Stations to Lock in Affiliations, Broadcasting & Cable, Oct. 17, 1994, at 26.

major market affiliates that will switch their affiliation to Fox. Blackstar plans to buy eleven VHF network affiliates and change their affiliation to Fox.[9]

- ABC and CBS have also begun acquiring equity interests in station groups as a means of securing affiliates and possibly increasing network programming clearances for the long term. ABC recently acquired an equity interest in Young Broadcasting and Young's five ABC affiliates promptly renewed their affiliations for ten-year terms -- until recently a term that was unusually long.[10] CBS formed a venture with Group W in July 1994 to acquire stations and lock them in as CBS affiliates. In addition, Group W's existing stations were secured as CBS affiliates for ten years.[11] The networks' attempts to lock in affiliates has not stopped with those stations in which they have bought equity stakes. There has also been a clear trend during the past year toward networks signing long-term affiliation agreements even with stations and station groups in which they have no ownership interest.[12]
- The concern that has given rise to these new business arrangements -- concern over affiliate defections to competing networks -- will itself give the networks powerful incentives to buy affiliate loyalty with preferential treatment in the distribution of syndicated programming which will be scheduled to air and which will occupy scarce broadcast time at the expense of emerging networks. Indeed, the networks have already tried to buy affiliate loyalty by substantially increasing affiliate

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[9] See, e.g., Stern, Supra at 28; Communications Daily, October 11, 1994, at 2.

[10] Stern, supra, at 28; Flint, ABC Has Young Affiliates, Variety, October 9, 1994, at 168.

[11] See Stern, supra at 28; Zier, CBS, Group W Form Historic Alliance, Broadcasting & Cable, July 18, 1994, at 14.

[12] See, e.g., Communications Daily, November 22, 1994, at 2 (reporting that Providence Journal and NBC signed 7-10 year affiliation agreements to Boise, Charlotte, Portland and Seattle stations); Zier and Ellis, Buying New Vision TV's for $230 Million, Broadcasting & Cable, November 21, 1994, at 6 (New Vision signs 10-year affiliation agreements with NBC and CBS); West & McClellan, Running With the Wind, Broadcasting & Cable, October 31, 1994, at 30 (all of ABC's recent affiliating agreements are for 10-year terms); McClellan, Keeping Up with the Affiliates, Broadcasting & Cable, August 1, 1994, at 11 (NBC announces 7 long-term affiliating agreements); Foisie, ABC Preempts CBS in Cleveland, Detroit, Broadcasting & Cable, June 20, 1994, at 7 (Scripps Howard signs 10-year affiliation agreements with ABC in 5 markets).

compensation; to keep their affiliates from switching to a different network, ABC, CBS and NBC paid an estimated $250 Million in affiliate compensation in 1994 -- approximately <u>double</u> what they paid the previous year.[13]

Viacom believes that with the proviso that the "UHF discount" is not made available to full service, full coverage networks, the Commission should continue in force the provision of its audience reach rule which attributes to UHF stations only half of their audience reach for the purpose of determining compliance with the Commission's audience reach limit. This so-called UHF discount takes into account the fact that audience reach calculations are market based determinations that do not necessarily reflect actual coverage of television stations. Since UHF stations generally have smaller coverage areas than VHF stations, the UHF discount compensates for the fact that UHF stations do not have as much coverage as their brethren. It also compensates for other differences between VHF and UHF stations, such as the fact that UHF signals, even within their coverage areas, are more subject to terrain blockage than VHF stations, and to the extent that the UHF discount may encourage some entities to invest in UHF stations in order to increase their audience reach beyond 25%, albeit subject to the UHF handicap, the result is to enhance the development of UHF stations. However, in order for this result to effectuate Commission policy with respect to UHF broadcasting but at the same time enhance the prospect of emerging networks by encouraging investment in UHF stations, (where virtually all of the remaining affiliations of the emerging networks are likely to occur, at least initially during their start-up periods), Viacom also urges the Commission, for the reasons stated above, to restrict the application of the UHF discount to entities other than full service, full coverage networks.

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[13] Farhi, <u>The TV Violence that Isn't on the Tube -- CBS, NBC and ABC in Bitter Sparring Match with Fox over Affiliates</u>, Washington Post, November 23, 1994 at C4; McClellan, <u>NBC Still Considering Offers, Wright Says</u>, Broadcasting & Cable, October 24, 1994, at 20; West & McClellan, <u>Running With the Wind</u>, Broadcasting & Cable, October 31, 1994, at 30, 31. The press has reported that the networks expect <u>high</u> clearances of network programs in exchange for the large compensation fees that they are paying to their affiliates. Tobenkin, <u>Nets Want Clearance Bang for Buck</u>, Broadcasting & Cable, November 7, 1994, at 20.

II. VIACOM STRONGLY SUPPORTS THE COMMISSION'S DECISION TO REEXAMINE THE TV/RADIO CROSS-OWNERSHIP OR "ONE-TO-A-MARKET" RULE.

Viacom submits that the structured competitive and diversity analysis called for by the Commission, as confirmed by its own experience in owning and operating broadcast stations as well as the opening comments of numerous other broadcasters in this proceeding, makes clear that the public interest would be well served by elimination or, at a minimum, substantial relaxation of the one-to-a-market rule.[14]

The FCC already has recognized, in its 1992 decision relaxing the radio duopoly rules, the substantial public interest benefits that may be achieved through ownership of an expanded complement of radio stations (i.e., up to two AM and two FM stations) in larger markets. To date, however, television station owners have been denied full access to the economies of scale and operating efficiencies available to other radio licensees. Given the separate nature of the markets in which television and radio stations operate, there is no principled basis for continuing this more restrictive treatment of TV licensees.

Indeed, the Commission's recent case law further confirms that the public interest is not well served by denying TV licensees the efficiency and diversity benefits of operating an expanded group of radio stations in the same market. Moreover, as demonstrated in the earlier round of comments filed in this proceeding, to the extent that the TV and radio services may overlap with respect to any of the pertinent product markets -- such as local advertising -- identified by the Commission, there is no risk of undue concentration or anticompetitive behavior that would outweigh the demonstrable benefits of increased efficiency, competition, and diversity that radio/TV combinations can offer local consumers.[15] Any such risk would, in any event, be effectively constrained by the local ownership rules already applicable to each service.

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[14] Viacom herein offers its brief comments and perspectives on the one-to-a-market issue, recognizing that other commenters have set forth in detail the economic analysis warranting elimination of this rule in the context of their opening comments on the full range of rules addressed in this proceeding.

[15] See, e.g., Comments of New World Communications Group, at 27-28; Comments of Capitol Broadcasting Company, Inc., at 8-10; Comments of Communications Corporation of America, at 22-23; Comments of Golden Orange Broadcasting Co., Inc., at 15-16.

Accordingly, Viacom urges the Commission to abolish the one-to-a-market rule. At a minimum, to the extent the Commission nevertheless wishes to retain the rule to protect smaller markets, the Commission should reconcile its one-to-a-market waiver policy with its relaxation of the local radio caps by allowing combinations of one TV station, two AMs, and two FMs in the top twenty-five markets where at least thirty separately owned and operated licensees remain.

III. THE COMMISSION'S METHODOLOGY FOR ANALYZING THE COMPETITIVE EFFECTS OF THE TV-RADIO CROSS-OWNERSHIP RESTRICTION SUPPORTS THE COMPLETE ELIMINATION OF THE RULE

While the Commission invites a more elaborate analysis, its own preliminary findings and the comments submitted earlier in this proceeding make clear that most, if not all, of the elements of the one-to-a-market rule assessment are in fact quite straightforward. The Commission has preliminarily concluded that the rule should be eliminated entirely to the extent radio and television stations are recognized not to compete in the same markets.[16] Even if radio and television are found to compete in some of the same local product markets, moreover, the Commission has appropriately suggested that radio-television combinations should be allowed at least in those markets that have a sufficient number of remaining alternative suppliers to ensure diversity and competition.

A. The One-to-a-Market Rule Serves No Useful Purpose in the Fundamentally Distinct Markets for Delivered Audio and Video Programming

The Commission recognized in the NPRM, and the opening comments of television and radio broadcasters confirmed, that little analysis is needed to conclude that delivered video and audio programming are sufficiently distinct products as to represent different markets for competitive analysis purposes. Indeed, by its very nature, the visual component of video renders it fundamentally distinct from audio-only programming of the sort delivered by radio.

[16] If the one-to-a-market rule were eliminated altogether (while existing radio ownership caps remained in effect), an entity could own one AM, one FM, and one TV station in any market. In larger markets, companies could own two AMs, two FMs, and one television station.

Because television stations are fewer in number than their radio counterparts, and because of the far greater expense of producing and transmitting video programming, television broadcasters generally must target a broad "mass audience." The television audience, moreover, generally is expected to be stationary (most television viewing takes place in the home), and watching a television program is likely to be the primary activity of the audience member during a particular period of time. Thus, "prime time" for television is the evening hours, when most of the potential audience is at home.

Radio, on the other hand, is better able and more likely to engage in "niche" marketing to a more specialized audience, because transmission outlets are more numerous and programming less expensive. The radio audience is far more mobile than the TV audience; radio receivers are almost universally available in automobiles, and small portable sets make it possible to listen to radio programming while walking, jogging, or engaging in virtually any other activity. "Prime time" for radio is the morning or evening rush hour, when most audience members are in their cars, commuting to or from work.

The NPRM itself explicitly separates the video programming market from the audio programming market for purposes of analyzing the other rules at issue; the Commission's entire analytical framework appropriately treats delivered video programming as a market unto itself. As radio and television services do not operate in the same delivered programming market, Viacom submits that it is self-evident that allowing cross-ownership would harm neither competition nor diversity in either the local radio or TV market.

B. The Markets for Audio and Video Program Production Also Are Distinct and Provide No Basis for One-to-a-Market Restrictions

Viacom agrees with the Commission's conclusion that video and audio program production represent different product markets. The inherently visual nature of television programming and the more national scope of its primary production market easily distinguish it from radio program production. Most television stations, like the stations operated by Viacom and its subsidiary Paramount, fill the majority of their airtime with programming obtained from one of the networks and/or from national distributors of syndicated product. Radio licensees, on the other hand, are substantially more likely to format their stations locally. To the extent they obtain programming from satellite services or other syndicators, they deal with a different group of suppliers and compete with other radio station operators, and not with TV licensees, as potential purchasers.

In sum, as the Commission noted, "[video] products are readily distinguishable from other types of programming, like radio programming . . ." NPRM, at ¶ 47. Thus, Viacom submits, eliminating the TV/radio cross-ownership restriction would have no discernible effect on either the video or audio program production markets.

C. The Markets for Radio and TV Local Advertising Are Distinct and, in Any Event, the Availability of Numerous Advertising Alternative Outlets Effectively Constrains the Market Power of Radio/TV Combinations

The only element of the NPRM's methodology that appears to give the Commission any pause with respect to the one-to-a-market rule is the potential anti-competitive effect of removing the TV/radio cross-ownership restriction on the local advertising market. Yet Viacom's experience in the marketplace -- as well as that of the great majority of commenting parties -- confirms that advertisers generally do not treat broadcast television and radio advertising as direct substitutes. Moreover, to the extent that these distinct offerings nonetheless might be deemed to fall within the same product market, that broadly-defined market would necessarily include so many other local advertising outlets as to effectively eliminate the possibility of market power by permitted TV/radio combinations.

Television advertising offers potent visual qualities that are not readily available in radio advertising. Moreover, by typically reaching a much larger and often demographically broader market, broadcast television stations generally command a substantially higher price than local radio stations for their advertising time.

Viacom also submits that if the relevant advertising market is defined broadly enough to encompass both radio and television spot sales, other forms of local mass media advertising must be recognized to fall within this market as well. Local advertisers have a wide variety of mass marketing outlets from which to choose: broadcast television, cable television, radio, daily and weekly newspapers, suburban "shoppers" and local periodicals, local and regional editions of national magazines, billboards, direct mail, the yellow pages -- and the list goes on. If the Commission determines that radio spot time is a viable substitute for television commercials, these other forms of mass advertising also should be included in the definition of the product market, mitigating any conceivable concern that a single TV/radio combination -- could exercise undue power in the local advertising market.[17]

IV. RADIO/TV JOINT OWNERSHIP OFFERS SUBSTANTIAL ECONOMIC EFFICIENCIES AND RESULTING COMPETITIVE AND DIVERSITY BENEFITS

In its 1992 decision relaxing the radio ownership rules to permit, inter alia, the common ownership of up to two AM and two FM stations in markets with fifteen or more commercial radio stations, the Commission recognized that joint ownership and operation of an expanded complement of radio outlets makes possible substantial economies of scale and other operating efficiencies that translate into tangible public interest benefits.[18] Specifically, the Commission concluded that common ownership would provide "substantial benefits," including "the opportunity to combine administrative, sales, programming, promotion, production and other functions as well as to share studio space and equipment."[19] The Commission further found that, as a result, "common ownership could directly advance [its] underlying interest in promoting diversity and competition.[20] Moreover, the agency's decision reflected its conclusion that the

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[17] A joint TV/radio station owner's lack of market power over local advertising is particularly obvious in larger markets, where advertisers have an even greater variety of options from which to choose. To the extent smaller markets with a lesser number of advertising media may cause the Commission some limited concern, Viacom urges the Commission at the very least to exempt larger markets from the one-to-a-market rule, as set forth in Section III below.

[18] Memorandum Opinion and Order and Further Notice of Proposed Rulemaking in MM Docket No. 91-140, 7 FCC Rcd 6387 (1992).

[19] Id. at 6388 (quoting Report and Order in MM Docket 91-140, 7 FCC Rcd. 2755 (1992)) (internal quotations omitted).

[20] Id.

local radio marketplace is highly competitive and diverse, so that relaxation of the historic duopoly restriction posed no significant threat of concentration or anticompetitive conduct [21].

The broadcast industry and the members of its audience have already begun to reap the benefits of relaxation of the rule, which has strengthened previously struggling stations and broadened the variety of programming available to listeners in many markets. To date, however, the retention of the one-to-a-market rule has effectively precluded a number of television licensees from taking advantage of the relaxation of the rules for their sister service. Viacom submits that, in view of the clearly distinct nature of the markets for radio and TV programming and advertising, the one-to-a-market rule is wholly unnecessary and should be eliminated.

Indeed, joint ownership can result in increased program diversity, not to mention operating efficiencies through use of common facilities and staff, should the licensee wish to avail itself of such efficiencies. A TV licensee or other group owner allowed to own a full complement of local radio stations has both a greater ability and a greater incentive to offer new and varied programming than a single-outlet owner targeting a "greatest common denominator" audience. Beyond just particular programming segments, group owners can offer "niche" formats that single station owners would be economically prohibited from providing. Specialized formats and more selectively targeted advertising on radio stations also allow stations to offer advertisers the ability to reach more of the market, or at least a different segment of the market, than they would otherwise be able to do.

During the brief period of their common ownership, Viacom's WDCA(TV) and the co-located radio stations in the Washington, D.C.[22] metropolitan area have made significant contributions to diversity among area media. One station, WJZW(FM) (formerly WCXR-FM), has inaugurated a new "smooth jazz" format that has been highly successful from an audience acceptance standpoint, even though similar formats had twice failed in the past on independently owned stations in the Washington area. In addition, Viacom's Washington television station,

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[21] Id. at 6388, 6402

[22] Viacom acquired WDCA(TV) as a result of its merger with Paramount, shortly after it had consummated the acquisition of its third and fourth radio outlets in the market.

WDCA, is now affiliated with the new UPN television network, which is already providing prime time programming two nights per week in the "fifth network's" first season, and the station has just launched a prime time newscast. Thus, Viacom's ownership of one television and four radio outlets has enhanced format diversity in the Washington market.

The Commission notes that it is concerned that group ownership provide not just entertainment diversity, but also diversity in news and local programming. Viacom's experience, again, indicates that joint ownership serves to promote diversity in news and other information-based services as well. In the Washington area, for example, WCPT(AM) -- now known as WBZS -- recently changed to a business-information format, providing programming which has not heretofore been available on radio in the D.C. market. In addition, economic efficiencies realized through joint ownership frequently allow group owners to maintain a more substantial news and reporting division.[23] Finally, most group station owners -- including Viacom -- generally allow local managers to continue to make editorial and reporting decisions autonomously, further preserving a variety of viewpoints.

V. THE PUBLIC INTEREST WOULD BE SERVED BY ELIMINATING THE ONE-TO-A-MARKET RULE, AT LEAST IN LARGE MARKETS, AND AUTHORIZING LOCAL COMBINATIONS OF TV AND RADIO STATIONS CONSISTENT WITH THE LIMITATIONS FOR THE SEPARATE SERVICES

Based on the Commission's analysis as described above, it is evident that eliminating the one-to-a-market rule would not adversely affect any local product market and would instead promote both outlet and format diversity. In fact, on all of the occasions but one, in which special circumstances existed, on which the Commission has considered a request for waiver of the one-to-a-market rule under the case-by-case standard, it has found that, in the specific markets involved, multi-radio/TV combinations are indeed in the public interest.[24] There has been no

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[23] The Commission itself recently has recognized that joint ownership can result in more diverse news and public affairs programming. In one recent case, the Commission granted a permanent waiver of one-to-a-market rule based in part upon the owner's showing that joint ownership would allow the stations to take advantage of more "extensive news gathering facilities" and maintain access to "extensive public affairs programming." BREM Broadcasting, 9 FCC Rcd 1333 (1994).

[24] See e.g., KVI, Inc., 9 FCC Rcd 1330 (1994) (granting waiver to allow 2 AM/FM/TV combination in Seattle, WA market); BREM Broadcasting, 9 FCC Rcd 1333 (1994) (granting waiver to allow 2 AM/2 FM/TV

indication that either diversity or competition has been lessened in any of those markets. On the contrary, Viacom's own experience in Washington and other markets supports the Commission's conclusion that waiving the one-to-a-market rule in large markets promotes economic benefits while maintaining diversity.

The Commission has repeatedly concluded that a permanent waiver of the one-to-a-market rule is in the public interest where it "permit[s] the public to benefit from such efficiencies of operation as may be achieved through the use of common facilities and staff, consistent with the maintenance of diversity and vigorous competition." KVI, Inc., at 1331.
It would be inconsistent now to adopt a standard that did not recognize the competitive and diversity benefits that these mergers have produced. Accordingly, Viacom urges the Commission to allow all licensees, including local television station owners, to realize the benefits of maintaining a full complement of radio stations in highly competitive markets.

If the Commission is not prepared to eliminate the rule entirely, it should at a minimum exempt large markets where there are a sufficient number of voices to ensure competition. There is no basis for denying TV licensees the benefits of expanded radio station ownership, where TV/radio combinations will not affect the relevant product markets for either service. By exempting larger markets from the one-to-a-market restriction, the Commission would reconcile its liberalized waiver policy with its recent decisions as well as its 1992 relaxation of the radio ownership rules, thereby allowing two AM/two FM/TV combinations in sufficiently competitive and diverse markets.

The Commission seeks comment on whether the 30-voices standard should be reduced to allow waivers where only 20 independent voices would remain in the market. Although Viacom

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combination in Pensacola, FL market); Golden West Broadcasters, FCC 94-361 (released Feb. 21, 1995) (granting waiver to allow 2 AM/FM/TV combination in Los Angeles, CA market); First Broadcasting Company, FCC 95-54 (released Feb. 14, 1995) (granting waiver to allow 2 AM/TV combination in San Francisco, CA market). In each of these cases, the Commission determined that the "public benefits of common ownership and joint operation . . . outweigh any negative effect on diversity and competition." BREM Broadcasting, at 1335. Contra, NewCity Communications of Massachusetts, Inc.
FCC 95-117 (released May 5, 1995) (denying waiver where proposed licensee intended to modify the facilities of the station to be assigned, reducing that station's overlapping signal).

believes the Commission has ample basis to consider providing relief to markets with fewer than 30 separate voices, the 30-voices standard would provide an easily administered benchmark beyond which the Commission can be entirely confident that competition and diversity will be present. Thus, if the one-to-a-market rule is not eliminated altogether, Viacom urges the Commission at a minimum to exempt sufficiently large markets from the cross-ownership rule, allowing multiple radio-television mergers in top 25 markets with 30 remaining voices.

VI. CONCLUSION

Because of the potential competitive harm to emerging networks, Viacom urges the Commission not to eliminate either the 25% aggregate national audience reach cap or the television duopoly rule for full service, full coverage networks. Conversely, because of the lack of potential harm to any local markets, Viacom urges the Commission to eliminate the TV/radio cross-ownership rule entirely and, at a minimum, to the extent the Commission determines to retain the one-to-a-market rule in limited form to protect smaller markets, it should provide full relief to larger markets.

Respectfully submitted,

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By: ______________________

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